

**Submitter :** Mrs. Cori Snyder  
**Organization :** Pittsylvania County Schools  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

Please do not eliminate administrative claiming. Here at Pittsylvania County Schools, we are very careful about what we submit on the time studies and try to err on the side of caution when coding. Last year, we received over \$157,000 for administrative claiming. This money was returned to support services for program enhancement. It has been a valuable asset to our school system.

**Submitter :** Mrs. Karen Denton  
**Organization :** Norfolk Public Schools  
**Category :** Speech-Language Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

Please consider the points made in the attachment.

**Submitter :** Mr. Frederick Schmitt  
**Organization :** Norfolk City Public Schools  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2287-P-899-Attach-1.DOC

CMS-2287-P-899-Attach-2.DOC

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2287-P  
P.O. Box 8018  
Baltimore, MD 21244-8018

Dear Sir(s) or Madam(s):

The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, gifts and talents, or both. As a member of CEC, I am writing in response to the September 7, 2007 *Federal Register* announcement requesting public comment on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for Medicaid-eligible children who receive services under Part B and Part C of the Individuals with Disabilities Education Act.

### **Introduction**

I am deeply concerned about the devastating impact that the proposed Centers for Medicare and Medicaid Services (CMS) regulations for the elimination of reimbursements for transportation and administrative claiming under Medicaid will have on the welfare of children with disabilities. The elimination of these reimbursements would inevitably shift the financial responsibility for these claims to individual school districts and early childhood providers across the nation. The Administration estimates that the elimination of these reimbursements will provide a savings of \$635 million in the first year and \$3.6 billion over the next five years. However, there is no corresponding increase in funding for the federal special education law, the Individuals with Disabilities Education Act (IDEA), that will enable schools and early childhood providers to make up for the reduction in Medicaid reimbursements to schools and early childhood providers.

### **Major Issues and Concerns**

I have major issues with the proposed rule to eliminate the Medicaid reimbursement for transportation and administrative claiming. I believe it is flawed and should be withdrawn. I recognize that the proposed rule, in some cases, seeks to address legitimate policy issues. However, according to the background for the proposed regulations, "school-based administrative activities do not meet the statutory test under section 1903(a)(7) of being 'necessary....for the proper and efficient administration of the State plan.'" I strongly disagree with this statement. The provision of transportation services and administrative claiming under Medicaid are indeed necessary for carrying out state Medicaid plans. Many medically provided services under Medicaid are provided at the school and early childhood settings where Medicaid-eligible children attend, whether or not those services are provided by employees of the state or the local Medicaid agency. This is particularly relevant because the background to the proposed regulations also states that, "CMS recognizes that schools are valid settings for the delivery of Medicaid services", yet the proposed rules would still not recognize the need for transportation to

and from school for Medicaid-eligible children who take advantage of these services at school and early childhood settings.

In addition, the proposed regulations state that they were drafted, “Due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting...” However, the studies that conclude that the misfeasance conducted by some schools in claiming Medicaid reimbursements only took into account an insignificant number of schools. CMS should rightly impose sanctions on those schools and early childhood providers that improperly or illegally misrepresent claims for Medicaid reimbursement; punishing every school and early childhood provider nationwide is not the proper course of action to take in this instance.

I believe that Congress and the Administration should work together to achieve consensus on appropriate policies and procedures to ensure that Medicaid beneficiaries receive the highest quality services, consistent with Title XIX of the Social Security Act, and to ensure that states operate their Medicaid programs to achieve the best outcomes and in the most publicly accountable manner. I believe that this proposed rule prevents a necessary dialogue between federal officials, state Medicaid officials, other state officials (including individuals responsible for programs for people with mental illnesses, developmental disabilities, and child welfare), services providers, and representatives of affected Medicaid populations. I am not aware of any meaningful effort by the Secretary of HHS or CMS to work with affected stakeholders to address current policy concerns. Indeed, I am troubled by dubious enforcement actions and audits by the HHS Office of the Inspector General (OIG) that have appeared more focused on limiting federal expenditures than improving the appropriateness or effective administration of services under Medicaid.

### **Legal Basis for Providing Transportation and Administrative Claiming**

The proposed CMS regulations to eliminate Medicaid transportation and administrative claiming contradict current law. There is firm legal standing for the allowable use of Medicaid claiming for transportation and administration.

First, Section 1903(c) of the Title XIX of the Social Security Act states that “nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.” Clearly the proposed regulations would be in direct conflict with this provision of law and would not further the purposes of Title XIX of the Social Security Act.

Second, school-based claiming was protected in the courts in the 1987 *Bowen* case, when the appellate court ruled that school-based Medicaid claims were reimbursable, and the Supreme Court elected to let that decision stand by denying cert.

Third, the proposed rules would not comply with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. Under current law, states must provide EPSDT services to all children who are eligible for the Medicaid program. This is one of the mandates that states must meet in order to operate a Medicaid program. Through EPSDT, Medicaid-eligible children must be seen periodically by health care professionals. In 1989 the law was amended to mandate that states provide any necessary Medicaid service that a child requires regardless of whether the state specifically covers the service as part of its regular Medicaid program. A state cannot restrict the services that it provides under the EPSDT mandate; it must make all types of services available, including the services children with disabilities require.

Fourth, under the Medicare Catastrophic Coverage Act of 1988, states are permitted to obtain limited funds for Individualized Education Program-related services and for early intervention/family support services as defined in the individualized family service plan (IFSP). The proposed regulations would deny legally allowable claims to provide services under IEPs and IFSPs.

Finally, the proposed rules would go beyond the regulatory scope and power of the Executive Branch and is inconsistent with Medicaid law. To the extent that policy changes are needed, I believe that the legislative process is the appropriate arena for addressing these issues.

### **Federal Cost Shifting and Reduced Levels of Service**

The proposed rules for the elimination of the Medicaid transportation and administrative claiming will be a huge financial hit to already cash-strapped schools and early childhood providers. The federal government has not even provided half of the promised funds for the IDEA, and denying schools and early childhood providers in this country an additional \$635 million will only make a bad situation worse. This in turn will shift the financial burden to state and local governments to pay a greater share for required services under IEPs and IFSPs, and the frequency and/or intensity of those services may be reduced.

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Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering my comments and recommendations.

Frederick J. Schmitt  
Chief Financial Officer  
Norfolk City Public Schools, Norfolk, Virginia

**Submitter :** Mrs. Kristen Schulte  
**Organization :** Norfolk City Public Schools  
**Category :** Speech-Language Therapist

**Date:** 11/06/2007

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**GENERAL**

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see attachment

CMS-2287-P-900-Attach-1.DOC

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**Submitter :** Christine Bronson  
**Organization :** Minnesota Department of Human Services  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-901-Attach-1.PDF



Minnesota Department of **Human Services**

*Minnesota*  
**Department**  
*of* **Education**

November 6, 2007

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2287-P  
Mail Stop S3-14-22  
7500 Security Boulevard  
Baltimore, MD 21244

***Minnesota Department of Human Services and Department of Education Comments on:***  
Docket: CMS-2287-P, Elimination of Reimbursement under Medicaid for School Administration  
Expenditures and Costs Related to Transportation of School-Aged Children Between Home and  
School

Dear Mr. Weems:

Thank you for the opportunity to comment on the proposed regulation. Minnesota supports efforts to ensure appropriate payment for Medicaid costs. However, we are also committed to ensuring that children eligible for Medicaid services are actually enrolled in the program and able to receive them. The investments we make in our children's future produce extraordinary returns relative to their costs. Therefore, we have concerns about several of the policies CMS is proposing and strongly recommend that the Centers for Medicare & Medicaid Services (CMS) consider these concerns and revise the regulation accordingly.

The Secretary of Health and Human Services has determined that school-based Medicaid administrative activities are no longer necessary for the proper and efficient administration of the Medicaid state plan. CMS cites four reasons for eliminating Medicaid reimbursement for school-based administrative and transportation activities:

- (1) The activities or services support the educational program and do not specifically benefit the Medicaid program;
- (2) The activities or services are performed by school systems to further their educational mission and/or to meet requirements under the IDEA;
- (3) The types of school-based administrative activities for which claims are submitted to Medicaid largely overlap with educational activities that do not directly benefit the Medicaid program; and
- (4) Transportation from home to school and back is not properly characterized as transportation to or from a medical provider.

Contrary to the Secretary's finding, Minnesota's experience is that school-based activities are essential to the proper and efficient administration of our Medicaid program as we find it is both proper *and* efficient to ensure that children eligible for Medicaid are enrolled in Medicaid. The administrative activities performed by schools not only facilitate Medicaid enrollment, they also help ensure that once enrolled, children actually *receive* the Medicaid services they need.

The access or lack of access to health services can have a substantial and life-long impact on children's lives. There is no economic value in reducing or limiting efforts to meet the health care needs of children. The perceived savings produced by doing so will likely result in greater costs down the road.

CMS' proposed alternative of allowing only Medicaid agency employees to perform administrative activities in school is not practical or optimal. School personnel interact with children and families on a daily basis. They are familiar to and trusted by families and are in the best position to detect both existing unmet needs and the changes in family situations that might produce new needs. In addition, having staff in each school whose primary duties are educational spend a small portion of their time performing Medicaid administrative activities is more efficient than having multiple full-time Medicaid state agency employees dividing their time between several schools.

The proposed policy restricting claims for school-based administrative activities will result in two unappealing outcomes; administrative costs that should be borne by the Medicaid program will be shifted to schools, and more children who are eligible for Medicaid will fail to be enrolled in the program and receive services. Eliminating Medicaid reimbursement for administrative services performed by school personnel leaves states with the choice of shifting Medicaid administrative activities in school settings to Medicaid agency employees, who will be more expensive and less effective than school personnel, or having school personnel continue to perform those activities without reimbursement. States already face a significant unfunded mandate under IDEA. The provisions of this proposed regulation will only add to that burden.

In the section of the regulation regarding the alternative policies considered by the agency, CMS discusses the agency's existing options for increasing oversight of school-based administrative claiming. The agency notes that they considered: conducting stronger reviews of reimbursement methodologies; implementing new policies requiring greater accountability of expenditures; and issuing new guidance clarifying the federal requirements. In rejecting these more reasonable alternatives, CMS cites the 2003 Administrative Claiming Guide (the guide) and implies that the guide was ineffective in regulating school-based administrative claims concluding that "such activities cannot be adequately regulated or overseen."

Given the essential nature of school-based administrative support of Medicaid, we believe it would be prudent for CMS to exhaust all of the currently available options for dealing with the perceived risk before resorting to the extreme measures proposed in this regulation. CMS believes that the 2003 guidance has been ineffective. However, in the cover letter accompanying the guide, CMS promised to provide states with additional guidance and individualized help in ensuring their school-based administrative claiming programs were in compliance with the new rules. We note that the agency did not follow through on that promise and now instead seeks to eliminate an essential administrative

Kerry N. Weems  
November 6, 2007  
Page 3

function instead of making a sincere and consistent effort to develop and disseminate clear policy and then monitor and enforce that policy.

Because the examples of abusive practices cited in the preamble discussions all date to the period prior to the issuance of the guide and the agency's March, 1999 letter on transportation, states and other stakeholders cannot be assured that agency's efforts in controlling the abuses have been ineffective. However, even if we accept CMS' premise that they have not been effective, eliminating federal financial participation for services and activities that are difficult to oversee is a disconcerting precedent to set in a program that is complex in nature but also vital to people who need care.

CMS also appears to be reluctant to recognize that Medicaid services and activities can overlap with the services and activities of other types of programs. A consistent theme in the agency's recently proposed policies has been an attempt to separate Medicaid services and other program services into mutually exclusive categories for payment and coverage purposes. This is not realistic or reasonable. The question should be whether or not the activity serves a Medicaid purpose and, if so, whether the cost is reasonable. A legitimate Medicaid cost should not be made illegitimate by virtue of the employment status of the individual providing the service.

Specialized transportation to and from school for special needs children benefits both Medicaid *and* schools. The agency's current policy of limiting the instances in which Medicaid reimbursement is available to only those days in which the school is acting as a Medicaid provider is an appropriate and practical method of allocating the costs of the service across the two programs that benefit from it.

Instead, CMS proposes to eliminate Medicaid reimbursement for transportation even when a child is receiving medical services from the school. The current policy was a reasonable and considered response to the abuses that were taking place prior to 1999. It eliminated the bad practices while retaining measures that would help ensure that special needs children were able to access needed medical services provided in the school setting. Because CMS has already acknowledged that it is appropriate and necessary for children to receive medical services in the school setting, the agency's reluctance to pay for transportation to ensure that children can access those needed services is puzzling.

Given the significant negative impact of this proposed rule regarding children's access to Medicaid and to health care, we recommend that CMS re-examine the options available for addressing the potential for improper claiming in the school setting and amend the proposed rule accordingly.

Sincerely,



Christine Bronson  
Medicaid Director



Alice Seagren  
Commissioner of Education

**Submitter :** Mrs. Nicole McCarrel  
**Organization :** Norfolk Public Schools  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

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See Attachment

CMS-2287-P-902-Attach-1.DOC

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**Organization :** Norfolk Public Schools  
**Category :** Speech-Language Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

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See attachment

CMS-2287-P-903-Attach-1.TXT

CMS-2287-P-903-Attach-2.DOC

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Fourth, under the Medicare Catastrophic Coverage Act of 1988, states are permitted to obtain limited funds for Individualized Education Program-related services and for early intervention/family support services as defined in the individualized family service plan (IFSP). The proposed regulations would deny legally allowable claims to provide services under IEPs and IFSPs.

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### **Federal Cost Shifting and Reduced Levels of Service**

The proposed rules for the elimination of the Medicaid transportation and administrative claiming will be a huge financial hit to already cash-strapped schools and early childhood providers. The federal government has not even provided half of the promised funds for the IDEA, and denying schools and early childhood providers in this country an additional \$635 million will only make a bad situation worse. This in turn will shift the financial burden to state and local governments to pay a greater share for required services under IEPs and IFSPs, and the frequency and/or intensity of those services may be reduced.

### **Conclusion**

The proposed CMS rules to eliminate the transportation and administrative claiming for schools and early childhood providers under Medicaid are both misguided and contrary to existing legal precedent. For the reasons stated here, I urge the Secretary of Health and Human Services to withdraw the proposed rule.

Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering my comments and recommendations.

**Submitter :** Mr. Joseph Scanlon  
**Organization :** Quaboag Regional School District  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I am in opposition to this proposed change as it will adversely impact our regional school district. With less revenue in being received we will be forced to lower expenses which could result in a negative impact on the educational experience for our students.

**Submitter :** Mr. Raul orozco  
**Organization :** Mental health  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

Centers for Medicare & Medicaid Services, November 6, 2007  
Department of Health and Human Services,  
Attention: CMS-2287-P,  
Mail Stop S3-14-22  
7500 Security Boulevard  
Baltimore, MD 21244

Re: Opposition to proposed rule CMS-2287-P  
Dear Center for Medicare and Medicaid Services,

I am writing today to let you know that I am opposed to CMS-2287-P, I feel that it is a bad policy and could result in increased cost through missed opportunities to get kids covered by health insurance and connected to services they need before health issues become catastrophic.

Further, contrary to CMS statement that school-based MAA is not necessary for the proper and efficient administration of the State plan, today s schools and their staff are the primary source of information and referral for families on a wide range of services including those covered by the Medicaid program. Parents trust and depend on school staff for information on everything from housing to food to health services and since virtually all children attend school it is absolutely a proper and efficient system to utilize.

In their proposed rule, CMS tries to make the case that all activities and services performed by school district staff simply support educational programs, overlap with educational programs, or are required by IDEA, and therefore don t directly or specifically benefit the Medicaid program. In fact, we know that every day school staff assists students in extraordinary ways that go above and beyond educational programs. As a Board Member for the Guadalupe Unions School District Healthy Start Program, I am aware that, in our Guadalupe Union School District, they enrolled 358 children into MediCal, Healthy Families and Healthy Kids Programs this year alone. In addition, they provided free dental screenings for 1200 children per year and then connected them with insurance programs and dental providers. They are able to provide translation at IEP, SST Meetings were they have numerous opportunities to provide outreach to parents who otherwise be unaware of the health services and programs available to them. They are able to connect numerous children to Mental Health program, arrange transportation, etc. etc.. And lastly, with Medical reimbursement funds they were able to fund a Licensed Counselor, who is able to see our students on site.

In the area of specialized transportation, CMS justifies that students receive transportation from home to school and back regardless of whether or not they are determined eligible for special education services. Therefore, specialized transportation services should not be reimbursable through the LEA program. However, the cost of providing specialized transportation either in a wheel chair accessible vehicle or litter van is significantly more expensive than transportation provided to regular education students.

Sincerely,  
Raul Orozco



**Submitter :** Claudia Stith  
**Organization :** Norfolk Public Schools  
**Category :** Social Worker

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

"See Attachment"

CMS-2287-P-906-Attach-1.DOC

CMS-2287-P-906-Attach-2.DOC

CMS-2287-P-906-Attach-3.DOC

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2287-P  
P.O. Box 8018  
Baltimore, MD 21244-8018

Dear Sir(s) or Madam(s):

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### **Introduction**

I am deeply concerned about the devastating impact that the proposed Centers for Medicare and Medicaid Services (CMS) regulations for the elimination of reimbursements for transportation and administrative claiming under Medicaid will have on the welfare of children with disabilities. The elimination of these reimbursements would inevitably shift the financial responsibility for these claims to individual school districts and early childhood providers across the nation. The Administration estimates that the elimination of these reimbursements will provide a savings of \$635 million in the first year and \$3.6 billion over the next five years. However, there is no corresponding increase in funding for the federal special education law, the Individuals with Disabilities Education Act (IDEA), that will enable schools and early childhood providers to make up for the reduction in Medicaid reimbursements to schools and early childhood providers.

### **Major Issues and Concerns**

I have major issues with the proposed rule to eliminate the Medicaid reimbursement for transportation and administrative claiming. I believe it is flawed and should be withdrawn. I recognize that the proposed rule, in some cases, seeks to address legitimate policy issues. However, according to the background for the proposed regulations, "school-based administrative activities do not meet the statutory test under section 1903(a)(7) of being 'necessary....for the proper and efficient administration of the State plan.'" I strongly disagree with this statement. The provision of transportation services and administrative claiming under Medicaid are indeed necessary for carrying out state Medicaid plans. Many medically provided services under Medicaid are provided at the school and early childhood settings where Medicaid-eligible children attend, whether or not those services are provided by employees of the state or the local Medicaid agency. This is particularly relevant because the background to the proposed regulations also states that, "CMS recognizes that schools are valid settings for the delivery of Medicaid services", yet the proposed rules would still not recognize the need for transportation to

and from school for Medicaid-eligible children who take advantage of these services at school and early childhood settings.

In addition, the proposed regulations state that they were drafted, “Due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting...” However, the studies that conclude that the misfeasance conducted by some schools in claiming Medicaid reimbursements only took into account an insignificant number of schools. CMS should rightly impose sanctions on those schools and early childhood providers that improperly or illegally misrepresent claims for Medicaid reimbursement; punishing every school and early childhood provider nationwide is not the proper course of action to take in this instance.

I believe that Congress and the Administration should work together to achieve consensus on appropriate policies and procedures to ensure that Medicaid beneficiaries receive the highest quality services, consistent with Title XIX of the Social Security Act, and to ensure that states operate their Medicaid programs to achieve the best outcomes and in the most publicly accountable manner. I believe that this proposed rule prevents a necessary dialogue between federal officials, state Medicaid officials, other state officials (including individuals responsible for programs for people with mental illnesses, developmental disabilities, and child welfare), services providers, and representatives of affected Medicaid populations. I am not aware of any meaningful effort by the Secretary of HHS or CMS to work with affected stakeholders to address current policy concerns. Indeed, I am troubled by dubious enforcement actions and audits by the HHS Office of the Inspector General (OIG) that have appeared more focused on limiting federal expenditures than improving the appropriateness or effective administration of services under Medicaid.

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Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering my comments and recommendations.

**Submitter :** Ms. Patricia Sachon  
**Organization :** Norfolk Public Schools  
**Category :** Physical Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-907-Attach-1.DOC

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2287-P  
P.O. Box 8018  
Baltimore, MD 21244-8018

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**Submitter :** Mrs. Eileen Gusler  
**Organization :** Norfolk Public School District  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

**See Attachment**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Larilou Shaw  
**Organization :** Council for Exceptional Children  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-909-Attach-1.RTF

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2287-P  
P.O. Box 8018  
Baltimore, MD 21244-8018

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First, Section 1903(c) of the Title XIX of the Social Security Act states that “nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.” Clearly the proposed regulations would be in direct conflict with this provision of law and would not further the purposes of Title XIX of the Social Security Act.

Second, school-based claiming was protected in the courts in the 1987 *Bowen* case, when the appellate court ruled that school-based Medicaid claims were reimbursable, and the Supreme Court elected to let that decision stand by denying cert.



Third, the proposed rules would not comply with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. Under current law, states must provide EPSDT services to all children who are eligible for the Medicaid program. This is one of the mandates that states must meet in order to operate a Medicaid program. Through EPSDT, Medicaid-eligible children must be seen periodically by health care professionals. In 1989 the law was amended to mandate that states provide any necessary Medicaid service that a child requires regardless of whether the state specifically covers the service as part of its regular Medicaid program. A state cannot restrict the services that it provides under the EPSDT mandate; it must make all types of services available, including the services children with disabilities require.

Fourth, under the Medicare Catastrophic Coverage Act of 1988, states are permitted to obtain limited funds for Individualized Education Program-related services and for early intervention/family support services as defined in the individualized family service plan (IFSP). The proposed regulations would deny legally allowable claims to provide services under IEPs and IFSPs.

Finally, the proposed rules would go beyond the regulatory scope and power of the Executive Branch and is inconsistent with Medicaid law. To the extent that policy changes are needed, I believe that the legislative process is the appropriate arena for addressing these issues.

### **Federal Cost Shifting and Reduced Levels of Service**

The proposed rules for the elimination of the Medicaid transportation and administrative claiming will be a huge financial hit to already cash-strapped schools and early childhood providers. The federal government has not even provided half of the promised funds for the IDEA, and denying schools and early childhood providers in this country an additional \$635 million will only make a bad situation worse. This in turn will shift the financial burden to state and local governments to pay a greater share for required services under IEPs and IFSPs, and the frequency and/or intensity of those services may be reduced.

### **Conclusion**

The proposed CMS rules to eliminate the transportation and administrative claiming for schools and early childhood providers under Medicaid are both misguided and contrary to existing legal precedent. For the reasons stated here, I urge the Secretary of Health and Human Services to withdraw the proposed rule.

Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering my comments and recommendations.